

13285

No. _____

Supreme Court of Illinois

Davis

vs.

Cleghorn et al

71641  7

Supreme Court---Second Grand Division.

JANUARY TERM, 1861.

ABSTRACT.

AMOS DAVIS, appellant,
vs.
JOHN W. CLEGHORN and
ENOS HARRISON, appellees.

} *Appeal from Hancock.*

P.1 Declaration filed September 23d, 1858.

2 On note of hand made by Amos Davis, payable to one I. Davis, or bearer, for \$480, with interest at ten per cent. dated 16th May, 1857, payable 1st January, 1858, and avers that "*said I. Davis*, then and there indorsed the same to the said plaintiffs."

3 On the sixth day of March, 1860, said Amos Davis filed the following plea in said cause:

"And, for a further plea in this behalf, the said defendant says *actio non*, because he says that the said promisory note sued on in this cause was not indorsed by the said payee thereof, as by the plaintiffs', said declaration is above supposed; and this he is ready to verify, wherefore he prays judgment, &c.

And afterwards, on the 10th day of March, 1860, the following affidavit was filed with and attached to said plea:

STATE OF ILLINOIS,
Hancock County, } ss.

"G. Edmunds, Jr., attorney for the defendant, being duly sworn, says that the signature, '*I. Davis*,' to the endorsement on the back of said note sued on in this Court, is not in the hand-writing of said I. Davis. G. EDMUNDS, Jr.

"Sworn and subscribed before me, this
10th day of March, 1860.

S. R. DAVIS, Clerk."

4 Afterwards, on the 10th day of March, A.D. 1860, the said cause coming on for trial, a jury was waived.

5 The following note and endorsement was offered in evidence by the plaintiffs below:—

"\$480.

Montrose, May 16th, 1857.

On or before the 1st of January next, I promise to pay I. DAVIS, or bearer, four hundred and eighty dollars and — cents, with ten per centum interest, value received—payable at Montrose, without defalcation or discount.

AMOS DAVIS."

Which said note was endorsed as follows:

"I assign the within note to Cleghorn & Harrison for value received, this first day of September, 1857. I. DAVIS," by "C. P."

6 Which was all the evidence offered, and which the defendant below, at the time objected. The Court overruled the objection, and admitted the note and indorsement, to which ruling of the Court the defendant below at the time excepted, and filed his bill of exceptions.

4 The Court found the issues for the plaintiff below, and rendered judgment in his favor and against the defendant below, for \$615.

Appeal prayed, and allowed on entering into bond in sum of \$800, with Wm. R. Hamilton, as security, in thirty days.

Appeal bond filed.

ASSIGNMENTS OF ERROR.

7 1st. The Court erred in admitting the note and indorsement offered by the plaintiff below, in evidence, and overruling the objection of the defendant below, thereto.

2d. The Court erred in finding the issues for the plaintiff below, and rendering judgment in his favor against the defendant below.

3d. The Court erred in admitting the note and indorsement in evidence, because it varied from the note and indorsement described in the declaration.

FERRIS, HOOKER & EDMUNDS.

Atty's for Appellants.

Appellant's Points and Brief.

The plea denied the assignment of the note—was verified by affidavit—the Court allowed the note and assignment to be read in evidence without proof. R. S. Illinois, 1845, p. 421, §59.

There was a variance between the endorsement of the note declared on & the one offered in evidence —

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Filed Jan 14-67
Wm. C. Curry
clerk

Supreme Court---Second Grand Division.

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POINTS IN BRIEF OF APPELLEES.

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1 Parson contracts 205*

1st. The note being payable to I. Davis or bearer, was transferable by delivery, so as to authorize suit in the name of the holder. *Story on Promissory Notes*; Byles on Bills, 212, 213; 5 Pick., 225. R. S. 384-4. 3 Sam., 345; 24 Ills.

1st. The statute does not in terms apply to notes payable to bearer, any more than bank notes. 2d. If it did so apply the mode thereby pointed out, should not be construed to exclude other modes, or change the common law.

2d. If indorsement were necessary in such cases, that fact was not put in issue; R. S. 1845, p. 421-59.

1st. Affidavit not sworn to until cause was called for trial.

2d. Affidavit does not verify the facts stated in the plea. It only seeks to put in issue the *hand writing* of indorser's *name*, and not whether it was his *signature* or act.

SCOFIELD, FERRIS & MANIER,

Attorneys for Appellee.

Davis

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Deborah &

appellee's brief

ABRAHAM

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Wm. H. H. H.